
CONTRACT CLAUSES
(NONAPPROPRIATED FUND SUPPLY AND SERVICE CONTRACTS)

For use of this form, see AR 215-4; the proponent agency is ODCSPER

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I-1. DEFINITIONS (SEP 1984).

(a) "Head of the agency" *(also called "agency head")* or "Secretary of the Army, the Under Secretary, and the term "authorized representative" means any person, or board *(other than the Contracting Officer)* authorized to act for the head of agency or secretary.

(b) "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts on behalf of the nonappropriated fund instrumentality which is a party to this contract and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

I-2. NONAPPROPRIATED FUND INSTRUMENTALITY (SEP 1984).

The Nonappropriated Fund Instrumentality *(NAFI)* which is party to this contract is a nonappropriated fund instrumentality of the Department of the Army. NO APPROPRIATED FUNDS OF THE UNITED STATES SHALL BECOME DUE OR BE PAID THE CONTRACTOR OR CONCESSIONAIRE BY REASON OF THIS CONTRACT. This contract is not subject to The Contract Disputes Act of 1978.

I-3. COVENANT AGAINST CONTINGENT FEES (SEP 1984).

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. For breach of violation of this warranty the NAFI shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

I-4. CHANGES (SEP 1984) FIXED PRICE SUPPLY.

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the NAFI in accordance with the drawings, design, or specifications.

(2) Method of shipment or packing.

(3) Place of delivery.

(b) If any such change causes an increase or decrease in the cost of or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer decides that the facts justify it, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

(c) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

FOR SERVICE CONTRACTS ONLY

Substitute paragraph (a) of the basic clause above with (a) below:

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

- (1) Description of services to be performed.
- (2) Time of performance (*i.e., hours of the day, days of the week, etc.*).
- (3) Place of performance of the services.

FOR SERVICES AND SUPPLY CONTRACTS ONLY

If the requirement is for services (*other than architect-engineer services, transportation, or research and development*) and supplies are to be furnished, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) the Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one of the following:

- (1) Description of services to be performed.
- (2) Time of performance (*i.e., hours of the day, days of the week, etc.*).
- (3) Place of performance of the services.
- (4) Drawings, designs, or specifications when the supplies to be furnished are to be especially manufactured for the Fund in accordance with the drawings, designs, or specifications.
- (5) Method of shipment or packing of supplies.
- (6) Place of delivery.

FOR PROFESSIONAL SERVICES ONLY

Substitute paragraph (a) of the basic clause with (a) below and add paragraph (f) below.

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the services to be performed.

(f) No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written authorization of the Contracting Officer.

I-5. OFFICIALS NOT TO BENEFIT (SEP 1984).

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit arising from it. However, this clause does not apply to this contract to the extent that this contract is made with a corporation for the corporation's general benefit.

I-6. GRATUITIES (SEP 1984).

(a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or designee determines that the Contractor, its agent, or other representative -

- (1) Offered or gave a gratuity (*e.g., an entertainment or gift*) to an official, or employee of the United States or the NAFI; and
- (2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

(b) The facts supporting this determination may be reviewed by a court having lawful jurisdiction.

(c) If this contract is terminated under paragraph (a) above, the NAFI is entitled to pursue the same remedies as in a breach of the contract.

(d) The rights and remedies of the NAFI provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

I-7. NEW MATERIAL (SEP 1984).

Unless this contract specifies otherwise, the Contractor represents that the supplies and components, including any former Government or NAFI property, are new, including recycled (*not used or reconditioned*) and are not of such age or so deteriorated as to impair their usefulness or safety. If the Contractor believes that furnishing used or reconditioned supplies or components will be in the NAFI's interest, the Contractor shall so notify the Contracting Officer in writing. The Contractor's notice shall include the reasons for the request along with a proposal for any consideration to the NAFI if the Contracting Officer authorizes the use of used or reconditioned supplies or components.

I-8. VARIATION IN QUANTITY (SEP 1984).

A variation in quantity of any item called for by this contract will not be accepted unless the variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified elsewhere in this contract.

I-9. EXAMINATION OF RECORDS (SEP 1984).

(a) This clause is applicable if the amount of this contract exceeds \$10,000, and the contract was entered into by means of negotiation. The Contractor agrees that the Contracting Officer or the Contracting Officer's duly authorized representative shall have the right to examine and audit the books and records of the Contractor directly pertaining to the contract during the period of the contract and until the expiration of three years after the final payment under the contract.

(b) The Contractor agrees to include the clause in (a) above, in all subcontracts hereunder that exceed \$10,000.

I-10. CONVICT LABOR (SEP 1984).

The Contractor agrees not to employ any person undergoing sentence of imprisonment in performing this contract except as provided by 18 U.S.C. 4082(c)(2) and Executive Order 11755, December 29, 1973.

I-11. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION - GENERAL (SEP 1984)

(This clause does not apply to contracts subject to the provisions of the Walsh-Healey Public Contracts Act.)

This contract, to the extent that is of a character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) (The Act) is subject to the following terms and all other applicable provisions and exceptions of the Act and the regulations of the Secretary of Labor.

(a) **Overtime requirements.** A Contractor or subcontractor shall not require or permit any laborer (including watchmen and guards) or mechanic to work in excess of 8 hours in any calendar day, or 40 hours in any workweek, on any part of the contract work subject to the Act, unless, the Laborer or mechanic receives compensation at a rate not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day, or 40 hours in any workweek, whichever produces the greater amount of overtime.

(b) **Violation, liability for unpaid wages, and liquidated damages.** If the terms of paragraph (a) above are violated, the Contractor and any subcontractor responsible for the violation shall be liable to any affected employee for unpaid wages. In addition, the Contractor and Subcontractor shall be liable to the United States for liquidated damages. These damages are computed for each individual laborer or mechanic at \$10 for each calendar day on which the employee was required or permitted to be employed in violation of paragraph (a) above.

(c) **Withholding for unpaid wages and liquidated damages.** The Contracting Officer may withhold or upon written request of an authorized representative of the Department of Labor shall withhold from the Contractor, from any moneys payable on account of work performed by the Contractor or subcontractor under this contract or any other federal contract with the same Prime Contractor, such amounts as may administratively be determined to be necessary to satisfy any liabilities of the Contractor or subcontractor for unpaid wages and liquidated damages as provided in paragraph (b) above.

(d) **Subcontract.** The contractor and subcontractors at any lower tier shall insert paragraphs (a) through (d) of this clause in all subcontracts.

(e) **Records.** The Contractor shall maintain payrolls and basic payroll records containing the information specified in 29 CFR 5.5 (c). These records shall be preserved for 3 years from contract completion. The contractor will make the records available for inspection, copying or transcription by authorized representatives of the NAFI and the Department of Labor, and will permit such representatives to interview employees during working hours on the job.

I-12. WALSH-HEALEY PUBLIC CONTRACTS ACT (SEP 1984).

If this contract is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount that exceeds or may exceed \$10,000, and is subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35-45), the following terms and conditions apply:

(a) All representations and stipulations required by the Act and regulations issued by the Secretary of Labor (41 CFR Chapter 50) are incorporated by reference. These representations and stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now, or may hereafter, be in effect.

(b) All employees whose work relates to this contract shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR 50-202.2). Learners, student learners, apprentices, and handicapped workers may be employed at less than the prescribed minimum wage (41 CFR 50-202.3) to the same extent that such employment is permitted under Section 14 of the Fair Labor Standard Act (41 U.S.C. 40).

I-13. EQUAL OPPORTUNITY (SEP 1984).

(a) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contract and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with subparagraphs (b) (1) through (11) below. Upon request the Contractor shall provide information necessary to determine the applicability of this clause.

(b) During performing this contract, the Contractor agrees as follows:

(1) The contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

(2) The Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color religion, sex, or national origin. This shall include, but not be limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall in all solicitations or advertisement for employees placed by on behalf of the Contractor, state that all qualified applications will receive consideration for employment without regard to race, color, religion, sex or national origin.

(5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or worker representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall comply with Executive Order 11246, as amended, and the rules regulations, or orders of the Secretary of Labor.

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. Standard Form 100 (EEO-1), or any successor form, is the prescribed form to be filed within 30 days following the award unless filed 12 months preceding the date of award.

(8) The Contractor shall permit access to its books, records, and accounts by the contracting agency or the Office of Federal Contract Compliance Programs (OFCCP) the purpose of investigation to ascertain the Contractor's compliance with the applicable rules, regulations, and orders.

(9) If the OFCCP determined that the Contractor is not in compliance with this clause any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government/NAFI contracts, under the procedures authorized in Executive Order 11246, as amended in addition, sanctions may be imposed and remedies involved against the Contractor as provided in Executive Order 11246, as amended, the rule regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

(10) The Contractor shall include the terms and conditions of subparagraph (b) through (11) of this clause in every subcontract or purchase order that is not exempt by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Contractor shall take such action with respect to any subcontractor or purchase order as the contracting agency may direct as a means of enforcing the terms and conditions, including sanctions for noncompliance; provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor vendor as a result of any direction, the Contractor may request the United States enter into the litigation to protect the interest of the United States.

(c) Notwithstanding any other clause in this contract, disputes relative to this clause will, be governed by the procedures in 41 CFR Subpart B.

I-14. AFFIRMATIVE ACTION FOR SPECIAL DISABLED AND VIETNAM ERA VETERANS (SEP 1984).

(a) **Definitions.** "Appropriate office of the State employment service system," as used in this clause, means the local office of the Federal-State national system of public employment office assigned to serve the area where the employment opening is to be filed, including the District of Columbia, Guam, Puerto Rico, Virgin Islands, American Samoa, and the Trust Territory of the Pacific Island.

"Openings that the Contractor proposes to fill from within its own organization," as used in this clause, means employment openings for which no one outside the Contractor's organization (including any affiliates, subsidiaries, and the parent companies) will be considered and includes any openings that the Contractor proposes to fill from regularly established "recall" lists.

"Openings that the Contractor proposes to fill under a customary and traditional employer-union hiring arrangement," as used in this clause, means employment openings that the Contractor proposes to fill from union halls, under their customary and traditional employer-union hiring relationship.

"Suitable employment openings," as used in this clause -

(1) Includes, but is not limited to, openings that occur in jobs categorized as -

- (i) Production and nonproduction;
- (ii) Plant and office;
- (iii) Laborers and mechanics;
- (iv) Supervisory and nonsupervisory;
- (v) Technical; and
- (vi) Executive, administrative, and professional positions compensated on salary basis of less than \$25,000 a year; and

(2) Includes full-time employment, temporary employment of over 3 days, and part-time employment, but no openings that the Contractor proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement nor openings in an educational institution that are restricted to students of the institution.

(b) General.

(1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against the individual because the individual is a special disabled or Vietnam Era veteran. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise the qualified special disabled and Vietnam Era veterans without discrimination based on their disability or veterans' status in all employment practices such as-

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion or transfer;
- (iv) Recruitment;
- (v) Advertising;
- (vi) Layoff and termination;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

(2) The contractor agrees to comply with the rules, regulations, and relevant orders the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S. 793) (the Act), as amended.

(c) **Listing openings.**

(1) The Contractor agrees to list all suitable employment openings existing at contract award or occurring during contract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These opening include those occurring at any Contractor facility, including one not connected with performing this contract. An independent corporate affiliate is exempt from the requirement.

(2) State and local government agencies holding Federal contracts of \$10,000 or more shall also list all their suitable openings with the appropriate office of the State employment service.

(3) The listing of suitable employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting refer of veterans and nonveterans. This listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulation concerning nondiscrimination in employment.

(4) Whenever the Contractor becomes contractually bound to the listing terms of the clause, it shall advise the State employment service system, in each State where it has establishments, of the name and location of each hiring location in the State. As long the Contractor is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this contract clause.

(5) Under the most compelling circumstances, an employment opening may not suitable for listing, including situations with (i) the Government's/NAFIs needs cannot reasonably be supplied, (ii) listing would be contrary to national security, or (iii) requirement of listing would not be in the Government's/NAFIs interest.

(d) **Applicability.**

(1) This clause does not apply to the listing of employment openings which occur and are filed outside the 50 states, the District of Columbia, Puerto Rico, Guam, Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

(2) The terms of paragraph (c) above of this clause do not apply to openings that Contractor proposes to fill from within its own organization or under a customary traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of its organization or an employer-union arrangement for that opening.

(e) **Posting.**

The Contractor agrees to post employment notices stating (i) the Contractor obligation under the law to take affirmative action to employ and advance in employment qualified special disabled and veterans of the Vietnam era and (ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employ and applicants for employment. They shall be in a form prescribed by the Director Office of Federal Contract Compliance Program, Department of Labor (*Director*), and provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement of other contract understanding that the contractor is bound by the terms of the Act, and is committed to take affirmative action to employ and advance in employment qualified special disabled and Vietnam Era veterans.

(f) **Noncompliance.** If the Contractor does not comply with the requirements of this clause appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(g) **Subcontracts.** The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations or orders of the Secretary. The Contractor shall act as specified by the Director to enforce the terms, including action for noncompliance.

I-15. AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS (SEP 1984).

(Applicable to Contracts over \$2,500)

(a) **General.**

(1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental handicap. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as -

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion or transfer;
- (iv) Advertising;
- (v) Layoff and termination;
- (vi) Recruitment;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

(2) The Contractor agrees to comply with rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793), as amended.

(b) **Postings**

(1) The Contractor agrees to post employment notices stating: (1) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped individuals and (ii) The rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Director Office of Federal Contract Compliance Program, Department of Labor (*Director*).

(3) The Contractor shall notify each labor union or representative of workers with which it has collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to affirmative action to employ, and advance in employment, qualified physically and mentally handicapped individuals.

(c) **Noncompliance.** If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act provided by or through the Contracting Officer under the Rehabilitation Act of 1973 (*29 U.S. 793(the Act)*, as amended).

(d) **Subcontracts.** The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$2,500 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Director to enforce the terms, including action for noncompliance.

I-16. BUY AMERICAN ACT, TRADE AGREEMENTS ACT, AND THE BALANCE OF PAYMENTS PROGRAM (OCT 1984)

(a) This clause implements the Buy American Act (*41 U.S.C. Section 10e-d*), the Trade Agreements Act of 1979 (*19 U.S.C. 2501 et seq*), and the Department of Defense Balance of Payments Program by providing a preference to domestic end products over foreign end products, except for certain foreign end products which meet the requirements for classification as qualifying country and products or as designated country end products. For the purpose of this clause -

(i) "Components" means those articles, materials, and supplies incorporated directly into the end products.

(ii) "Qualifying country component" means (A) an item mined, produced, or manufactured in a participating country or in an FMS/Offset arrangement country when the applicable D&F has been made waiving the Buy American Act restrictions; or (B) a item listed in a defense cooperation country agreement.

(iii) "End product" means those articles, materials and supplies to be acquired for public use under the contract.

(iv) "Domestic end product" means (A) an unmanufactured end product which has been mined or produced in the United States, or (B) an end product manufactured in United States if the cost of its qualifying country components, and its components which are mined, produced, or manufactured in the United States exceed fifty percent (*50%*) the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and U.S. duty (*whether or not a duty-free entry certificate may be issued*). A component shall also be considered have been mined, produced, manufactured in the United States (*regardless of its source in fact*) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind (A) Determined by the Government to be mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, or (B) As to which Secretary concerned has determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act.

(v) "Foreign end product" means an end product other than domestic end product.

(vi) "Qualifying country end product" means (A) a participating country end product; (B) and FMS/Offset arrangement country end product when the applicable Determination and Findings has been made Waiving the Buy American Act restrictions; or (C) defense cooperation country agreement listed item.

(vii) "Participating country end product" means (A) and unmanufactured end product mined or produced in a participating country, or (B) and end product manufactured in a participating country if the cost of its qualifying country components and its components combined, produced, or manufactured in the United States exceeds fifty percent (*50%*) of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and any duty whether or not duty is, in fact, paid.

(viii) "FMS/Offset arrangement country end product" means (A) an unmanufactured end product mined or produced in an FMS/Offset arrangement country, or (B) and end product manufactured in an FMS/Offset arrangement country if the cost of its quality country components and its components which are mined, produced, or manufacture in the United States exceeds fifty percent (*50%*) of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation the end product and any duty whether or not duty is, in fact paid. To obtain the waiver necessary to accord preferential treatment for an FMS/Offset arrangement country end product, see the procedures at DOD FAR Supplement 225.7310(c)(2)(i).

(ix) "Defense cooperation country end product" means an item listed in the defense cooperation country agreement and produced in that country.

(x) "Designated country end product" means an article that (A) is wholly the growth product, or manufacture of the designated country, or (B) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a na character, or use distinct from that of the article or articles from which it transformed. The term includes services (except transportation services) incidental to its supply: Provided, That the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such.

(b) The Contractor agrees that there will be delivered under this contract only domestic products unless, in its offer, it specified delivery of foreign and products in the clause entitled Buy American Act, Trade Agreements Act, and Balance of Payments Program Certificate. An offer certifying that a qualifying country end product or a designated country end product will be supplied requires the Contractor to supply a qualifying country end product, a designated country end product, whichever is certified, or, at the Contractor's option, a domestic end product. An offer based on supplying a nonqualifying country end product, if accepted, will permit the Contractor to supply a product without regard to the requirement of this clause; however, Contractors may not supply an end product list at DOD FAR Supplement 225.403(70) with a total value at or above that specified in FAR Subpart 25.4 from a country not listed at FAR 25.401, except as provided at DOD FAR Supplement 255.402(b).

(c) Offers will be evaluated in accordance with the policies and procedures of AR 215-4, and referenced parts of FAR and its supplements.

(d) Generally, when the Buy American Act is applicable, each nonqualifying country offer of defense equipment shall be adjusted for the purpose of evaluation by: (i) adding 50% of the offer, exclusive of duty; (ii) adding 6% of the offer, inclusive of duty, if a domestic offer is from a large business that is not a labor surplus area concern, or (iii) adding 12% of the offer, inclusive of duty, if the domestic offer is from a small business concern or any labor surplus area concern. Evaluation will be inclusive or exclusive of duty whichever results in the greater evaluated price. See DOD FAR Supplement 225.1 for procedures and exceptions.

(e) Generally, when the Balance of Payments Program applies, each nonquality country offer of defense equipment shall be adjusted for the purpose of evaluation by increasing the offer by 50%. See AR 215-4, and referenced parts of its supplements.

I-17. CERTAIN COMMUNIST AREAS (SEP 1984).

(a) Unless advance written approval of Contracting Officer is obtained, the Contractor shall not acquire for use in the performance of this contract -

(1) Any Supplies or services originating from source within the Communist area of North Korea, Vietnam, Cambodia, or Cuba; or

(2) Any supplies that are or were located in or transported from or through North Korea, Vietnam, Cambodia, or Cuba.

(b) The Contractor agrees to insert the provisions of this clause, including this paragraph (b), in all subcontracts hereunder.

I-18. INSURANCE (SEP 1984).

(Applicable to contracts over \$25,000.)

(a) The Contractor shall, at its own expense, provide and maintain during the entire performance period of this contract at least the kinds and minimum amounts of insurance required in the Schedule or elsewhere in the contract, in no event shall the amount be lesser than the minimum requirements established by applicable state and local regulations and laws.

(b) Before commencing work under this contract, the Contractor shall certify to the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the NAFI's interest shall not be effective (1) for such period as the laws of the States in which the contract is to be performed prescribed at (2) until 30 days after the insurer of the Contractor gives written notice to the Contracting Officer, whichever period is longer.

(c) The Contractor shall insert the substance of the clause, including this paragraph (c), in subcontracts under the contract that requires a work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. At least 5 days before entry of each such subcontractors' personnel on the Government installation, the Contractor furnish (or measure that there has been furnished) to the Contracting Officer a current certificate of insurance, meeting the requirements of paragraph (b) above, for each such subcontractor.

I-19. TAXES (SEP 1984).

(a) Except as may be otherwise provided in this contract, the contract price includes all taxes, duties or other public charges in effect and applicable to this contract on the contract date, except any tax, duty, or other public charge which by law, regulation or governmental agreement is not applicable to expenditures made by the NAFI or on its behalf, or any tax, duty, or other public charge from which the Contractor, or any subcontractor hereunder, is exempt by law, regulation or otherwise. If any such tax, duty, or other public charge has been included in the contract price through error otherwise, the contract price shall be correspondingly reduced.

(b) If for any reason, after the contract date of execution, the Contractor or subcontractor is relieved in whole or on part from the payment or the burden of any, tax, duty, or other public charge included in the contract price, the contract price shall be correspondingly reduced; or if the Contractor or a subcontractor is required to pay in whole or in part any tax, duty, or other public charge which was not included in the contract price and which was not applicable at the contract date of execution the contract price shall be correspondingly increased.

(c) No adjustment of less than \$100 shall be made in the contract price pursuant to this paragraph.

I-20. PAYMENTS (SEP 1984).

The NAFI shall pay the Contractor, upon the submission of proper invoices or vouchers, the prices stipulated in his contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract Unless otherwise specified in this contract, payments shall be made on partial deliveries accepted by the NAFI if -

(a) The amount due on the deliveries warrants it, or

(b) The Contractor requests it and the amount due to the deliveries is at least \$1,000 or 50 percent of the total contract price.

I-21. DISCOUNTS FOR PROMPT PAYMENT (AUG 1988).

(a) Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a prompt payment discount in conjunction with the offer, offerors awarded contracts may include prompt payment discounts on individual invoices.

(b) In connection with any discount offered for prompt payment, time shall be computed from (1) the date of completion of performance of the services or delivery of the supplies to the carrier if acceptance is at point of origin, or date of delivery at destination or port of embarkation if delivery and acceptance are at either of these points, or (2) the date a proper invoice or voucher is received in the office specified by the NAFI, if the letter is later than date of performance or delivery. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the date on which a wire transfer was made.

I-22. INVOICES (JUN 1989).

(a) An invoice is a written request for payment under the contract for supplies delivered or for services rendered. In order to be proper, an invoice must include as applicable the following:

(1) Name and address of the contractor.

(2) Invoice date.

(3) Contract number or other authorization for supplies delivered or services performed (*including order number and contract line item number*).

(4) Description, quantity, unit of measure, unit price and extended price of supplies delivered or services performed.

(5) Shipping and payment terms (*e.g., shipment number and date of shipment, prompt payment discount terms*). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.

(6) Name and address of contractor official to whom payment is to be sent (*must be the same as that on the contract or on a proper notice of assignment*).

(7) Name (*where applicable*), title, phone number, mailing address of person to be notified in event of defective invoice.

(8) Any other information or documentation required by the contract (*such as evidence of shipment*).

Invoices shall be prepared and submitted in quadruplicate (*one copy shall be marked "original"*) unless otherwise specified.

(b) For purposes of determining if interest begins to accrue under the Prompt Payment Act (*Public Law 97-177, as amended by P.L. 100-496*):

(1) A proper invoice will be deemed to have been received when it is received by the office designated in the contract for receipt of invoices and acceptance of the supplies delivered or services rendered has occurred;

(2) Payment shall be considered made on the date on which check for such payment is dated;

(3) Payment terms (*e.g. "net 20"*) offered by the contractor will not be deemed a "required payment date", and

(4) The following periods of time will not be included:

(i) after receipt of an improper invoice and prior to notice of any defect or impropriety, but not to exceed 7 days (*3 days on contracts for meat food products, and 5 days on contracts for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils*); and

(ii) between the date of a notice of any defect or impropriety and the date a proper invoice is received. When the notice is in writing, it shall be considered made on the date shown on the notice.

I-23. EXTRAS (SEP 1984).

Except as otherwise provided in this contract, no payment for extras shall be made unless such extras and the price therefore have been authorized in writing by the Contracting Officer.

I-24. ASSIGNMENT OF CLAIMS (SEP 1984).

The Contractor cannot assign any rights or delegate any obligations under this contract without the prior written permission of the Contracting Officer.

I-25. DISPUTES (SEP 1984).

(a) This contract is subject to the rules and regulations promulgated by the Secretary of Defense and Secretary of the Army for NAFL contracting.

(b) This contract is not subject to the Contract Disputes Act of 1978 (*41 U.S.C. 601-613*).

(c) All disputes arising under or relating to this contract shall be resolved under this clause.

(d) "Claims" as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the clause. The submission may be converted to a claim under this clause, by complying with the submission requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(e) (1) A claim by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the NAFL against the Contractor shall be subject to a written decision by the Contracting Officer.

(2) For Contractor claims exceeding \$50,000, the Contractor shall submit with the claim a certification that -

(i) The claim is made in good faith;

(ii) Supporting data are accurate and complete to the best of the Contractor's knowledge and belief; and

(iii) The amount requested accurately reflects the contract's adjustment for which the Contractor believes the NAFL is liable.

(3) (i) If the Contractor is an individual, the certification shall be executed by that individual.

(ii) If the Contractor is not an individual, the certification shall be executed by -

(A) A senior company official in charge at the Contractor's plant or location involved; or

(B) An officer or general partner of the Contractor having overall responsibility for the Conduct of the Contractor's affairs.

(f) For Contract claims of \$50,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$50,000, the Contracting Officer must within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(g) The Contracting Officer's decision shall be final unless the Contractor appeals as provided in paragraph (h) of this clause.

(h) The Contracting Officer's final decision may be appealed by submitting a written appeal to the Armed Service Board of Contract Appeals with 90 days of receipt of the Contracting Officer's final decision. Decisions of the Armed Services Board of Contract Appeals are final and are not subject to further appeal.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

I-26. NAFI PROPERTY (SEP 1984).

The Contractor shall sign a receipt for any property furnished by the NAFI and upon expiration of this contract shall return such property to the NAFI in the same condition as when received, except for fair wear and tear.

(a) Such property will be supplied to the Contractor in a condition suitable for the intended use and in a timely manner.

(b) If property is received in a less than functional state or in a time frame which should delay Contractor's performance, the Contractor shall, upon receipt of property, notify the Contracting Officer, detailing the facts, and as directed by the Contracting Officer and at NAFI expense, either repair, modify, return or otherwise dispose of the property. In the case of an untimely delivery by the NAFI, the Contracting Officer shall make a determination of the delay, if any caused by the NAFI.

(c) The Contracting Officer shall, upon written notification from the Contractor of any such discrepancies, make and equitable adjustment for such expenses incurred by the contractor.

(d) After completion of the contract, if any such property is lost, damaged or destroyed by the Contractor, the NAFI shall be paid the cost of repairs of damages or the fair market value of the property as determined by the Contracting Officer.

I-27. INSPECTION AND ACCEPTANCE (SEP 1984).

Inspection and acceptance will be at destination, unless otherwise provided. Until delivery and acceptance and after any rejections, risk or loss will be on the Contractor unless loss results from negligence of the NAFI.

I-28. TERMINATION FOR CONVENIENCE (SEP 1984).

The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the best interest of the NAFI. If this contract is for supplies and is so terminated, the Contractor shall be compensated in accordance with AR 215-4, Chapter 7, Section IV. To the extent that this contract is for services, and is so terminated, the NAFI shall be liable only for payment in accordance with the payment provisions of this contract for services rendered prior to the effective date of termination.

I-29. TERMINATION FOR DEFAULT (APR 87).

(a) (1) The NAFI may, subject to paragraphs (c) and (d) below, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to -

(i) Deliver the supplies or to perform the services within the services within the time specified in this contract or any extension;

(ii) Make progress, so as to endanger performance of this contract *(but see subparagraph (a)(2) below)*; or

(iii) Perform any of the other provisions of this contract *(but see subparagraph (a)(2) below)*.

(2) The NAFI's right to terminate this contract under subdivisions (i)(ii) and (i)(iii) above may be exercised if the Contractor does not cure such failure within 10 days *(or are authorized in writing by Contracting Officer)* after receipt of the notice from the Contracting Officer specifying the failure.

(b) If the NAFI terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate supplies or services similar to those terminated, and the Contractor will be liable to the NAFI for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

(c) Except for defaults of subcontractors at any time, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or the public enemy, (2) acts of the Government/NAFI in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

(e) If this contract is terminated for default, the NAFI may require the Contractor to transfer title and deliver to the NAFI, as directed by the Contracting Officer, any

(1) Completed supplies, and

(2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans drawings, information, and contract rights *(collectively referred to as "manufacturing materials" in this clause)* that the Contractor has specifically produced or acquired the termination portion of this contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the NAFI has an interest.

(f) The NAFI shall pay contract price for completed supplies delivered and accepted. The Contractor and Contracting Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes Clause. The NAFI may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the NAFI against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the NAFI.

(h) The rights and remedies of the NAFI in this clause are in addition to any other rights and remedies provided by law or under this contract.

I-30. COMMERCIAL WARRANTY (SEP 1984).

The Contractor agrees that the supplies or services furnished under this contract shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such supplies or services and that the rights and remedies provided herein are in addition to and do not limit any rights afforded to the NAFI by any other clause of this contract.

I-31. ACCIDENT PREVENTION, FIRE PROTECTION, AND SANITATION (SEP 1984).

If this contract is performed in whole or in part on premises owned or under the control of the United States Government and/or the NAFI, the Contractor shall conform to all safety regulations and requirements concerning such promises in effect any time during the performance of the contract and take all necessary steps and precautions to prevent accidents. Any violation of safety regulations, unless immediately corrected as directed by the Contracting Officer, shall be grounds for termination of the Contract under the "Termination For Default" clause.

I-32. RESERVED.**I-33. NON-WAIVER OF DEFAULTS (SEP 1984).**

Any failure by the NAFI at any time, or from time to time, to enforce or require strict performance of any terms or conditions of this contract will not constitute waiver thereof and will not affect or impair such terms or conditions in any way or the NAFI's right at any time to avail itself of such remedies as it may have for any breach or breaches of such terms and conditions.

I-34. PERMITS AND LICENSES (SEP 1984).

The Contractor will obtain all necessary permits and licenses at no cost to the NAFI.

I-35. REMOVAL OF CONTRACTOR'S EMPLOYEES (SEP 1984).

The Contractor agrees to utilize only experienced, responsible and capable people in the performance of the work. The Contracting Office may require that the Contractor remove employees who endanger persons or property, or whose continued employment under this contract is inconsistent with the interests of military security.

I-36. SAVE HARMLESS (SEP 1984).

The Contractor shall save harmless the NAFI and the United States Government from any claims of third parties arising out of or from accidents or incidents involving acts or omissions of the contractor, its officers, agents, or employees, occurring as a result of performance of the terms and conditions of this contract or as a result of operation of NAFI furnished equipment or materials, if any, or of the performance of the services under this contract.

I-37. SERVICE CONTRACT ACT OF 1965 (SEP 1984).

(Applicable to service contracts in excess of \$2,500 only)

This contract is subject to the Service Contract Act of 1965, as amended (41 USC 351 et seq.) and is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor issued thereunder (29 CFR Part 4).

(a) **Compensation.**

(1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or authorized representative, as specified in any wage determination attached to this contract.

(2) If there is such a wage determination attached to this contract, the Contract Officer shall require that any class of service employee which is not listed therein which is to be employed under the contract (*i.e., the work to be performed is not performed by any classification listed in the wage determination*), be classified by the Contractor so as to provide a reasonable relationship (*i.e., appropriate level of skill comparison*) between such unclassified and the classification listed in the wage determination. Such conformed class of employees shall be paid the monetary wage and furnished the fringe benefits as are determined pursuant to the procedures in this action.

(3) Such conforming procedure shall be initiated by the Contractor prior to the contract work by such unlisted class of employee. A written report of the proposed conforming action, including information regarding the agreement or disagreement of the authorized representative of the employees involved or, where there is no authorized representative the employees themselves, shall be submitted by the Contractor to the Contracting Officer not later than thirty (30) days after such unlisted class of employees performed contract work. The Contracting Officer shall review the proposed action and promptly submit a report of the action, together with the agency's recommendation and pertinent information, including the position of the Contractor and the employees, to the Wage and Hour Division, Employment Standards Administration, U.S. Department Labor, for review. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement with 30 days receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary.

(4) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contractor with a written copy of such determination or it shall be posted as part of the wage determination.

(5) The process of establishing wage and fringe benefits rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending of the circumstances. Standard wage and salary administration practice which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (*Federal Wage Board Pay System and the General Schedule*) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintain between job classifications based on the skill required and the duties performed in the case of a contract modification, an exercise of an option or existing contract or in any other case where a contractor succeeds a contract under which the classification in question was previously conformed pursuant to this section, a new conformed wage rate and fringe benefits may be assigned to such conforming classification by indexing (*i.e., adjusting*) the previous conformed rate and fringe benefits by an amount equal to the average (*mean*) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, an those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees. The Contractor shall advise the Contracting Officer of the action taken, but the other procedures in paragraph (a)(3) of the clause need not be followed.

(7) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(8) The wage rate and fringe benefits finally determined pursuant to paragraphs (a) and (3) of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay such unlisted employee is compensation agreed by the interested parties and finally determined by the Wage and Hour Division retroactive to the date such class employees commenced contract work shall be a violation of the Act and this contract.

(9) Upon discovery of failure to comply with paragraph (a)(2) through (8) of this clause the Wage and Hour Division shall make a final determination of conformed classifications, wage rate, and/or fringe benefits which shall be retroactive to the date such class of employees commenced contract work.

(b) **Adjustment of Compensation.** If, as authorized pursuant to section 4(d) of the Service Contract Act of 1965 as amended, the term of this contract is more than one (1) year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees shall be subject to adjustment after 1 year and not less often than once every 2 year, pursuant to wage determinations to be issued by the Wage and Hour Division, Employment Standards Administration of the Department of Labor as provided in such Act.

(c) **Obligation to Furnish Fringe Benefits.** The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined conformably thereto by furnishing any equivalent combinations of bona fide fringe benefits, or by making equivalent or differential payments in cash in accordance with the applicable rules set forth in Subpart D of 29 CFR part 4, and not otherwise.

(d) **Minimum Wage.** In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor under this contract shall pay any person performing work under the contract (regardless of whether they are service employees) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938, Nothing in this provision shall relieve the contractor or any subcontractor of any other obligation under law or contract for the payment of a higher wage to any employee.

(e) **Successorship.** If this contract succeeds a contract, subject to the Service Contract Act of 1965 as amended, under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the Contractor nor any subcontractor under the contract shall pay any service employee performing any of the contract work (*regardless of whether or not such employee was employed under the predecessor contract*), less than the wages and fringe benefits provided for in such collective bargaining agreements, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 4.1b(b) of 29 CFR Part 4 apply or unless the Secretary of Labor or his authorized representative find, after hearing as provided in 4.10 of 29 CFR Part 4 that the wages and/or fringe benefits provided for such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 4.11 of 29 CFR Part 4, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's-length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into a result or arm's-length negotiations the Department will issue a new or revised wage determination, setting forth the wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract, 53 Comp. Gen. 401 (1973). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(f) **Notification to Employees.** The Contractor and any subcontractor shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (*Publication WH 1313*) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.

(g) **Safe and Sanitary Working Conditions.** The Contractor or subcontractors shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the contractor or subcontractor which are unsanitary or hazardous or dangerous to the health or safety of service employees engaged to furnish these services and the Contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

(h) **Records and Employees Interview.**

(1) The Contractor and each subcontractor performing work subject to the Act shall make and maintain for three (3) years from the completion of the work record containing the information specified below for each employee subject to the Act a shall make them available for inspection and transcription by authorized representative of the Wage and Hour Division, Employment Standards Administration of the U.S. Department of Labor.

(i) Name and address and social security number of each employee.

(ii) The correct work classification or classifications, rate or rates, benefits payments in lieu thereof, and total daily and compensation of each employee.

(iii) The number of daily and weekly hours so worked by an employee.

(iv) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(v) A list of monetary wages and fringe benefits for those classes of service employees not included in the wage determination attached to this contract b for which such wage rates or fringe benefits have been determined by the interested parties or by the Administrator or authorized representative pursuant to paragraph (a) of this clause. A copy of the report required by paragraph (a)(3) of this clause shall be deemed to be such a list.

(vi) Any list of the predecessor or contractor's employees which had been furnished to the Contractor pursuant to paragraph (o) of this clause.

(2) The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available such records for inspection or transcription shall be a violation of the regulation and this contract, and in the case failure to produce such records, the Contracting Officer, upon direction of the Department of Labor and notification of the Contractor, shall take such action to cause suspension of any further payment or advance of funds until such violation ceases.

(4) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(i) **Pay Periods.** The contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction *(except as otherwise provided by law or regulations, 29 CFR part 4)*, rebate, or kickback on any accounts. Such payments shall be made no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

(j) **Withholding of Payment and Termination of Contract.** The Contracting Officer shall withhold or cause to be withheld from the Government/NAFI prime Contractor under this or any other Government/NAFI contract with the prime Contractor such sums as an appropriate official of the Department of Labor requests or such sums as the Contracting Officer decides may be necessary to pay under paid employees employed by the Contractor or subcontractor in the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the agency may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of these clauses relating to the Service Contract Act of 1965, may be grounds for termination of the right to proceed with the contract work. In such event, the Government/NAFI may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost.

(k) **Subcontractors.** The Contractor agrees to insert these clauses in this section relating to the Service Contract Act of 1965 in all subcontracts subject to the Act. The term "Contractor" as used in these clauses in any subcontract, shall be deemed to refer to the subcontractor, except in the term "Government/NAFI prime Contractor".

(l) **Service Employee.** As used in this clause, the term "service employee" means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in Part 541 of Title 29, Code of Federal Regulations, as of July 30, 1976, and any subsequent revision of those regulations. The term "service employee" includes all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

(m) **Federal Wage Board (Blue Collar) and General Schedule (White Collar) Wages and Fringe Benefits Applicable to Service Employee Classifications.** The following statement is included in contracts pursuant to section 2(a)(5) of the Act and is for informational purposes only:

The following classes of service employees to be employed under the contract with the Government/NAFI would be subject, if employed by the contracting agency, to the provisions of 5 U.S.C. 5341 or 5 U.S.C. 5332 and would, if so employed, be paid not less than the following rates of wages and fringe benefits:

EMPLOYEE CLASS	MONETARY WAGE- FRINGE BENEFIT

(n) **Collective Bargaining Agreements Applicable to Service Employees.** If wages to be paid or fringe benefits to be furnished any service employees employed by the Government/NAFI prime Contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government/NAFI prime Contractor shall report such fact to the Contracting Officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance, such agreements shall be reported promptly after negotiation thereof.

(o) **Seniority List.** Not less than (10) days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance or the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Contractor *(predecessor)* or successor *(4.173 of Regulations, 29 CFR Part 4)*, the incumbent prime Contractor shall furnish to the Contracting Officer a certified list of the names of all service employees on the Contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor contractors of each such service employee. The Contracting Officer shall turn over such list to the successor contractor at the commencement of the succeeding contract.

(p) **Regulations Incorporated by Reference.** Rulings and interpretations of the Service Contract Act of 1965, as amended, are contained in Regulations, 29 CFR Part 4 and are hereby incorporated by reference in this contract.

(q) **Contractor's Certificate.**

(1) By entering into this contract, the contractor (*and officials thereof*) certifies that neither it (*nor he or she*) or any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded Government/NAFI contracts virtue of the sanctions imposed pursuant to section 5 of the Act.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government/NAFI contract pursuant to section 5 of the Act.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 1 U.S.C. 1001.

(r) **Variations, Tolerances, and Exemptions Involving Employment.** Notwithstanding any of provisions in paragraph (a) through (p) of this clause relating to the Service Contract Act of 1965, the following employees may be in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Public Law 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government/NAFI business.

(i) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical, or mental deficiency or injury may be employed wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Service Contract Act without diminishing any fringe benefits, cash payments in lieu thereof required under section 2(a)(2) of that Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped clients of sheltered workshops under section 14 of the Fair Standards Act of 1938, in the regulations issued by the Administrator (*29 CFR Parts 520, 521, 524, and 525*).

(ii) The Administrator will issue certificates under the Service Contract Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts authorizing appropriate rates of minimum wages (*but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof*) applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (*29 CFR Parts 520, 521, 524, and 525*).

(iii) The Administrator will also withdraw, annual, or cancel such certificates accordance with the regulations in Parts 525 and 526 of Title 26 of the Code of Federal Regulations.

(s) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment, and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set fourth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeyman employed on the contract work in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program.

(t) **Tips.** An employee engaged in an occupation in which he or she customarily and regularly receives more than thirty dollars (\$30) a month in tips may have the amount of tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act in accordance with section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531; Provided, however, that the amount of such credit may not exceed \$1.24 per hour after December 31, 1960. To utilize this provision:

(i) The employer must inform tipped employee about this tip credit allowance before the credit is utilized;

(ii) The employees must be allowed to retain all tips (individually or through pooling arrangement and regardless of whether the employer elects to take credit for tips received);

(iii) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit;

(iv) The use of such tip credit must have been permitted under any predecessor collective bargaining agreements applicable by virtue of section 4(c) of the Act.

(u) **Disputes Concerning Labor Standards.** Disputes arising out of the labor provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 4, 6 and 8. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor or the employees or their representatives.

I-38. SERVICE CONTRACT ACT OF 1965 (*SEP 1984*).

(*Applicable to Service Contracts not in excess of \$2,500.*)

Except to the extent that an exemption, variation or tolerance would apply if this were a contract in excess of \$2,500, the contractor and subcontractor hereunder shall pay all of the employees engaged in performing work on the contract not less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. Regulations and interpretations of the Service Contract Act of 1965, as amended, are contained in 29 CFR Part 4 and are hereby incorporated by reference in this contract.